

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





77-1387

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-  
Appellee

vs.

APPEAL

DOCKET NUMBER  
77-1387

DOUGLAS STEWART,

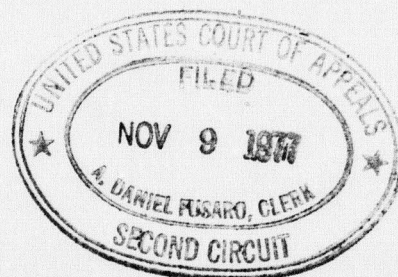
Defendant-  
Appellant

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APPELLANT'S BRIEF ON APPEAL  
+ APPENDIX

B  
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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-  
Appellee

vs.

DOUGLAS STEWART,

Defendant-  
Appellant

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## STATUTES

New York Revised Penal Law,

Sections 70.00, 70.15, 70.40, 220.03, 220.21



### PRELIMINARY STATEMENT

Defendant, Douglas Stewart, was arrested on July 31, 1975 by agents of the Drug Enforcement Administration while in an automobile operated by Stephen Castle in the City of Buffalo, New York. Stewart was initially charged in District Court with possession of heroin with intent to distribute, but these charges were dismissed when laboratory tests on the substance seized from Castle's vehicle proved negative. While in custody, however, Stewart made a written statement to agents of the D.E.A. concerning Stephen Castle in which he implicated himself in Castle's drug trafficking activities. Castle had also been arrested on the same date on a warrant and later was convicted of possession of heroin with intent to distribute.

The defendant and his brother, Robert Stewart, a resident of Washington, D.C., were indicted by a Federal Grand Jury on June 17, 1976 in a single count indictment alleging a conspiracy to distribute quantities of heroin in violation of 21 U.S.C. 841 a. Stephen Castle was named as an unindicted co-conspirator. Overt acts involving trips and telephone calls to and from Washington, D.C. from July 18, 1975 to August 12, 1975 were alleged.

Following completion of pre-trial discovery, defendant, Douglas Stewart, moved to suppress the statement made by him on July 31, 1975 on the ground that it was made in violation of his Fifth and Sixth Amendment rights. The trial judge, Hon. John T. Curtin, D.J., held a hearing on November 5, 1976 and November 20, 1976 at which two D.E.A. agents, Joseph E. Burns and Kenneth B. Peterson, the defendant and the defendant's wife, Orvetta Stewart, testified. The court, in an order dated April 22, 1977 denied the motion to suppress.

The case was tried before a jury on June 3rd, 6th and 7th, 1977 and resulted



in verdicts of guilty against Douglas Stewart and not guilty against Robert Stewart. The evidence consisted of the testimony of Stephen Castle, unindicted co-conspirator, Douglas Stewart's statement taken July 31, 1975 and corroborative testimony and exhibits concerning seizure of drugs from Castle's apartment and a meeting between Castle and defendant, Robert Stewart, in Washington, D.C. The jury deliberated in excess of seven hours before returning its verdict in Douglas Stewart's case and for more than thirteen hours before acquitting Robert Stewart. The evidence admitted against each co-defendant was substantially the same, with the exception being Douglas Stewart's statement of July 31, 1975 which was admitted only as against Douglas Stewart, after redaction to exclude any reference to Robert Stewart.

Douglas Stewart was sentenced on August 31, 1977 to the custody of the Attorney General for a period of four years, with an additional special parole term of at least three years.

#### STATEMENT OF FACTS

At approximately 5:30 P.M. on July 31, 1975 Douglas Stewart was arrested without a warrant by agents of the Drug Enforcement Administration while in an automobile operated by Stephen Castle near the intersection of Delaware and Hertel Avenue in the City of Buffalo. Castle and the defendant were taken by the agents back to Castle's apartment on Hertel Avenue where they remained handcuffed for a period of approximately two hours while agents searched the premises pursuant to a search warrant. ( Transcript of suppression hearing, Exhibit 2 on Appeal, page 51; all references hereinafter are to the transcript of the suppression hearing, unless otherwise noted)

While at Castle's apartment, defendant, Douglas Stewart, was advised by one



of the D.E.A. agents that, since he had left Castle's apartment within a 20-minute period of the search, he could be charged with possession of the contraband substances being recovered from the apartment. Defendant was told that the agents had an arrest warrant for Castle, but that he, the defendant, was a bonus. (T. 50-51)

At approximately 7:30 P.M., defendant, Douglas Stewart, and Castle were then transported to the D.E.A. field office in downtown Buffalo where each arrestee was interrogated by a team of agents in the view of the other. Present also, but not under arrest, was defendant's wife, Orvetta Stewart. Prior to signing a waiver of rights form, defendant was advised by one of the agents that, since some of the D.E.A. agents were part of a state task force, defendant could be prosecuted in either Federal or State Court. He was further advised that the maximum Federal penalty was fifteen years imprisonment while the State Courts imposed a mandatory life imprisonment sentence. (T. 53-54) Stewart was also told that the agents could influence the outcome in Federal Court and that a low bail arrangement could be made in the Federal Court and that, therefore, defendant faced an early release from custody. (T. 53-56) Stewart was asked to cooperate with the agents and provide information against Castle. (T. 58-60) Stewart was told that the information sought was not for use against him, but was rather for use against Stephen Castle. (T. 60) Stewart testified that he would not have made a statement had he known that the Government intended to use it against him. (T. 62)

Douglas Stewart signed the waiver at approximately 9:01 P.M. and then provided a statement to the agents "relative to the narcotic trafficking of Stephen Castle C2-75-X043". (Page 1, paragraph 1 of Statement of Douglas V. Stewart, dated 11 PM. July 31, 1975, Exhibit 5 on Appeal) The statement concerns Castle's trips to and from



Washington, D.C., in Stewart's company, for the purpose of making heroin purchases.

There is no testimony that Douglas Stewart was advised of his rights to counsel and against self-incrimination other than at the time of execution of the waiver. Stewart was initially charged with possession of heroin with intent to distribute, based on a substance found in Castle's automobile. This charge was later dismissed when laboratory analysis proved negative. (T. 48-50) The present charge was not brought until June 19, 1976 and was for conspiracy to possess and distribute controlled substances.

On July 31, 1975 Douglas Stewart was addicted to the use of heroin, suffering from what he described as a "spoon a day" habit. Prior to the interrogation, he had last used heroin early in the day of the 31st. (T. 56-57) His condition at the time of the waiver and subsequent interrogation was one of withdrawal. He was experiencing hot and cold flashes, running of the eyes and nose, nausea, some diarrhea and sweating. (T. 56-57, 73-74, 95) When Stewart inquired about medication to counteract the withdrawal symptoms, he was advised that this would be made available later when he was taken to the Erie County Holding Center. (T. 78, 81)

At the suppression hearing the Government presented testimony from D.E.A. agent Joseph E. Burns regarding his reading of the Miranda warnings to Stewart, his subsequent signing of the waiver form and, later, Stewart's making a statement concerning Castle in which Stewart also relates his own involvement. (T. 5-9) On cross-examination, Agent Burns, when asked whether he made any representation to Stewart to induce him to make a statement, stated that he advised Stewart only that any cooperation given would be brought to the attention of the Court. (T. 29-30) However, he also stated that he did not recall what other agents said to Stewart. (T. 30-31)



The subject of possible penalties "may have" been discussed, (T. 31, 37) but Agent Burns did not recall it. Agent Burns did deny that Stewart showed any overt signs of heroin withdrawal.

At that point the Government rested. (T. 45) The defendant and the defendant's wife then testified to the facts set forth above. On rebuttal, the Government called Agent Kenneth B. Peterson who had actually arrested the defendant on July 31, 1975, was with him at the D.E.A. offices, and was one of the agents whom Stewart testified had made threats and representations to him. Instead of addressing itself to the entirety of the testimony given by the defendant and his wife, the Government limited rebuttal to the issue of Stewart's physical condition at the time of the waiver and interrogation. (T. 97-101) This left unchallenged Stewart's and his wife's allegations of psychological coercion.

The trial Court's order denying suppression, entered April 22, 1977, discounts the defendant's allegation he was suffering from withdrawal, credits his testimony that he was told he could be charged in either State or Federal Court, but finds that this was not a threat and did not render the subsequent statement involuntary and, apparently, discounts defendant's testimony regarding the promise of non-use of the statement against him. (Order entered April 22, 1977, Exhibit 3 on Appeal, pages 2-3)

#### QUESTION PRESENTED

On the basis of the evidence adduced at the suppression hearing, were the statements made by Douglas Stewart voluntarily given to the Government agents.



ARGUMENT

POINT I

THE GOVERNMENT FAILED TO MEET ITS  
BURDEN OF ESTABLISHING THE VOLUNTARINESS  
OF THE STATEMENT

At the suppression hearing, the government produced testimony concerning the reading of the Miranda warnings to Douglas Stewart. On cross-examination the agent was asked whether he made any representations or inducements or gave Stewart any reason to waive his rights. (T.29) Agent Burns replied:

CROSS EXAMINATION BY MR. BITTNER

A. I advised Mr. Stewart that any cooperation he would give to the Drug Enforcement Administration would be brought to the attention of the Court.

He denied having made any specific promises himself in return for a waiver, but his testimony regarding what other agents may have said to Stewart is considerably more equivocal:

CROSS EXAMINATION BY MR. BITTNER

Q. All right, so there may have been a discussion regarding penalties which might be imposed on Mr. Stewart?

A. There was none by myself. I don't know what the other people said to Mr. Stewart.

Q. Officer, you testified that you heard or that you were right at the same table with the defendant. You would, therefore, have heard any other conversations which took place between the other agents and the defendant, is that correct?

A. Yes, sir, but I do not recall the conversations. (Transcript, page 31)



Agent Burns' testimony throughout the hearing was that he did not know or did not recall whether any promises or inducements were made by the other agents. Also significant was Agent Burns' testimony that his first contact with Stewart after the arrest was at 9:00 P.M. on July 31, 1977, some three and one half hours after the arrest and approximately one and one half hours after Stewart was transported to the D.E.A. office.

After a brief redirect, the government rested. Douglas Stewart took the stand, as did his wife, Orvetta, and each testified that a series of representations and inducements were made to Douglas Stewart in order to procure a waiver. Cross-examination by the government revealed no material inconsistency. Despite the defendant's assertions, the government limited rebuttal evidence to the issue of Stewart's physical condition at the time of the waiver and interrogation.

Language in Miranda v. Arizona, 384 U.S. 436, 475 (1966) indicates clearly that the government had a burden to meet, at least in the face of defendant's assertions:

If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.

Sims v. Georgia, 389 U.S. 404, 406 (1967) also requires that the prosecution rebut evidence of involuntariness. There, defendant testified he was the victim of physical abuse prior to his confession. A doctor testifying for the prosecution was evasive and none of the officers present during the incident were produced as witnesses. Thus, petitioner's claim went uncontradicted. The Court, noting that the State had every opportunity to contradict petitioner's version of the events, suggested that its failure to do so supported the conclusion that rebuttal was not possible.



Nor can testimony from a government witness that he does not "remember" whether events transpired as defendant asserts amount to a rebuttal. "No legal alchemy can transmute such wholly equivocal testimony into a denial or refutation of the petitioner's specific recitation of events." Haynes v. Washington, 373 U.S. 503, 510 (1963).

The conclusion which flows from the above cases is that the government had a burden in the instant case to present evidence to refute defendant's testimony. In failing to sustain that burden, the government has pointed inevitably to the conclusion that rebuttal evidence was not available, and that defendant's assertions must be accepted as true.

## POINT II

### THE INCRIMINATING STATEMENTS BY DOUGLAS STEWART WERE NOT VOL- UNTARILY MADE TO THE GOVERNMENT AGENTS

#### A.

The trial court found that the D.E.A. agents did state to Stewart that he could be charged in State or Federal Court but found that this was not a threat. (Order dated April 22, 1977). The Court, however, made no specific finding that the agents told Stewart that the State charge carried a life sentence while the Federal charge only a fifteen year maximum. Nor was a finding made regarding whether Stewart was advised that unless he waived his privilege, he would be processed through the State Courts. It is difficult to understand why these two related findings were not made, since Stewart was the only witness who testified to any discussion regarding State versus Federal prosecution. If his testimony is credible on the one portion of the discussion, it is certainly just as credible as to the remaining portions. Stewart was also told the prosecution could be "controlled" in Federal Court, and that a low bail could be arranged.



A promise of low bail, standing alone, would not invalidate an otherwise voluntary waiver. U.S. v. Ferrara, 377 F 2d 16 (CA 2 1967) Such a promise is deemed a "mere deception" U.S. ex rel. Lathan v. Deegan, 450 F 2d 181, 185 (CA 2 1971) In U.S. v. Duvall, 537 F2d 15 (CA 2 1976), a case similar to the instant case, however, a material misrepresentation by the government prompted the Court of Appeals to rule that the subsequent statement should have been suppressed. In Duvall, the Assistant United States Attorney advised the defendant that he faced 100 years in prison. This sentence was only a theoretical maximum in the highly unlikely event that consecutive sentences were imposed for all counts. In Stewart's case, even if the prosecution had been brought in the New York State Courts, it is equally unlikely that the defendant would be incarcerated for life, if convicted. Penalties for possession of heroin range from a possible one year (New York Revised Penal Law, sections 220.03, 70.15) to a possible twenty five years to life (New York Revised Penal Law, sections 220.21, 70.00), depending on the quantity possessed. At most, Stewart would have been subjected to a life parole term after a specified minimum sentence of imprisonment. (New York Revised Penal Law, section 70.40)

Miranda v. Arizona, 384 U.S. 436, 476 (1966), clearly mandates the outcome in this case, as it did in U.S. v. Duvall, supra:

Moreover, any evidence that the accused was threatened, tricked or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. 384 U.S. at 476.

The D.E.A. in Buffalo does not refer cases to the State Courts for prosecution. Even if that were the practice, however, it would violate the strictures of Miranda and Duvall to threaten the defendant with the theoretically heavy penalties possible from a State prosecution. See United States v. Arredo-Sarmiento, 545 F 2d 785 (CA 2 1976)



The case before the Court is far more analogous to cases like United States ex rel. Everett v. Murphy, 329 F 2d 68 (CA 2 1964) and Lynumn v. Illinois, 372 U.S. 528 (1963), where materially false inducements were made in extracting a waiver, than it is to cases like United States ex rel. Lathan v. Deegan, 450 F 2d 181 (CA 2 1971) and United States v. Pomares, 499 F 2d 1220 (CA 2 1974), where mere deception and no deception, respectively, were perpetrated by the agents. In Everett, the suspect was falsely advised that the victim was not dead and that the suspect's cooperation was needed to convince the victim to bring a lesser charge. In Lynumn, the female arrestee was advised she would get ten years in jail and that her children would be taken from her and placed in foster care unless she cooperated. Contrasted are Lathan, in which an interrogator posed as an Army officer, and made no specific promises to the defendant soldier, and Pomares, in which the defendant, an intelligent business man, was merely advised he was his own best lawyer and that he faced "heavy penalties", but where no threats or promises were made.

B.

In addition to the threat regarding a State prosecution carrying a life sentence upon conviction, Stewart was also told the statement was not for use against him, but was rather for use against Stephen Castle. This is borne out not only by Stewart's testimony (T.60) but also by that of his wife, Orvetta, (T.94) and by the statement itself. (Statement dated July 31, 1975, Exhibit 5 on Appeal, page 1) The statement, in handwriting other than Stewart's, is entitled "a statement ...relative to the narcotic trafficking of Stephen Castle C2-75-X043". The trial judge did not credit Stewart's testimony on this point, citing an answer he gave indicating it was his "impression" that the statement was for use against Castle. (T.62-63; Order dated April 22, 1977, Exhibit 3 on Appeal, page 2) Apparently the Court felt Stewart equivocated from his



earlier statement that he was promised non-use if he gave a statement. Defendant contends that the trial judge's finding was clearly erroneous.

The Court seemed to take the position that if Stewart were warned the statement could be used against him, his subsequent waiver was valid, without regard to whether any tricks preceded the warnings. (Order of April 22, 1977, page 3) This approach overlooks the mandate of Miranda that the defendant not be threatened, tricked or cajoled into a waiver. 384 U.S. at 476. Certainly, a promise of non-use is no "mere deception".

It is also clear beyond question that a promise of non-use requires the suppression of any statement made in good faith in reliance on the promise. Shotwell Manufacturing Co. v. United States, 371 U.S. 341 (1963); Eram v. United States, 168 U.S. 532 (1897). See also United States v. Nussen, 531 F 2d 15 (CA 2 1976)

### POINT III

#### THE ERROR IN ADMITTING THE STATE- MENT AT TRIAL WAS NOT HARMLESS BEYOND A REASONABLE DOUBT

Unless the Court is satisfied beyond a reasonable doubt that it was harmless error to admit a statement at trial, it must reverse the conviction. Chapman v. California, 386 U.S. 18 (1967); Milton v. Wainwright, 407 U.S. 371 (1971). In Stewart's case the evidence consisted chiefly of the statement plus the testimony of the unindicted co-conspirator, Stephen Castle, who testified he provided the money for the heroin but was only purchasing it to give to Stewart's wife, Orvetta, with whom he was having an affair. Castle said he gave some to Douglas Stewart for sale to defray his costs in purchasing other heroin for Orvetta Stewart. (Trial transcript, 70-72,178) On cross-examination, however, Castle admitted he was involved in supplying other



individuals with heroin for sale at a profit. (Trial Transcript 184-188, 211, 227-228)

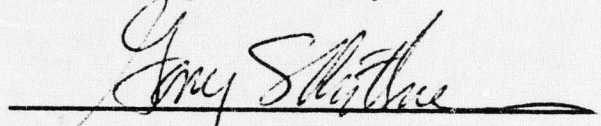
That Castle's credibility was highly suspect may be inferred from the lengthy period the jury deliberated and from the fact that Robert Stewart was eventually acquitted, although Castle testified unequivocally that Robert Stewart arranged the meetings between the seller and Castle and, in fact, received some heroin and money for his efforts. (Trial Transcript 75-78, 85, 88) The only significant difference in the evidence presented against each brother was that the July 31, 1975 statement was admitted against Douglas Stewart alone, after redaction to exclude any reference to Robert Stewart. (Trial Transcript, 381-382)

CONCLUSION

For the reasons stated hereinabove, the defendant, Douglas Stewart, respectfully requests that this Court reverse the judgment of conviction below.

Respectfully submitted,

Dated: Buffalo, New York  
November 4, 1977



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-  
Appellee

vs.

DOUGLAS STEWART,

Defendant-  
Appellant

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APPEAL

DOCKET NUMBER  
77-1387

APPENDIX ON APPEAL



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

Plaintiff

-VS-

CR-76-87

ROBERT STEWART and  
DOUGLAS STEWART,

Defendants

---

Pending for decision before the court is the defendant Douglas Stewart's motion to suppress a written statement made by him subsequent to his arrest on July 31, 1975. A hearing was held at which the defendant, his wife, and agents testified. Following is a summary of the facts developed at the hearing.

At about 5:30 P.M. on July 31, 1975, agents of the Drug Enforcement Administration (D.E.A.) arrested the defendant and Stephen Castle. The agents, defendant and Mr. Castle all went to Castle's apartment where a search of the premises was conducted. After that, defendant was brought to the D.E.A. office in downtown Buffalo.

About 9:00 o'clock that evening the defendant was initially interviewed by agents of the D.E.A. He was informed of his rights by the use of a card from which the D.E.A. agent read and explained his rights

EXHIBIT A



to him and also asked him to sign a waiver of rights. After the reading, the defendant said he understood his rights and Stewart then signed the waiver and the agents proceeded to question him. The questioning went on for about an hour-and-a-half and a three-page statement was prepared.

Douglas Stewart now argues that the statement should be suppressed because it was not voluntary. He claims that when the agents were interviewing him he was suffering from withdrawal symptoms. This testimony directly conflicts with that of the agents who testified that he appeared normal, did not ask for medication or make any complaints of treatment during the interview. I credit the testimony of the agents. During the interview the agents explained to him that he could be charged in either state or federal court. This information was not a threat and does not make the statement involuntary.

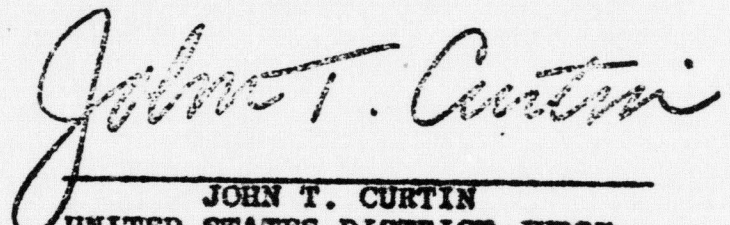
The defendant also claims that he was promised that whatever statement he made would not be used against him but would only be used against Stephen Castle. However, during cross-examination, Stewart said that he was under the impression that statements taken from him would be used against Mr. Castle.



Considering all of the evidence, I find that the defendant was warned that the statement could be used against him.

It appears beyond a reasonable doubt that the statement was voluntarily given after the defendant's rights were carefully explained to him. The motion of the defendant, Douglas Stewart, to suppress the statement is denied.

So ordered.

  
\_\_\_\_\_  
JOHN T. CURTIN  
UNITED STATES DISTRICT JUDGE

DATED: April 22, 1977



## STATEMENT OF RIGHTS AND WAIVER

UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF NARCOTICS AND DANGEROUS DRUGS

DATE

7-31-75

PLACE D.E.A. Office 68 Court St. Buffalo, New York

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court or other proceedings. You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. In such a case you have a right to have a court-appointed attorney present at the interrogation. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you talk to a lawyer.

You may waive the right to advice of counsel and your right to remain silent and answer questions or make a statement without consulting a lawyer if you so desire.

WAIVER

I ☐ have read ☒ had read to me the statement of my rights shown above. I understand what my rights are. I am willing to answer questions and make a statement. I do not want a lawyer. I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind has been used against me. I was taken into custody at (time) 530 ☐ A.M. ☒ P.M., on (date) 7-31-75, and have signed this document at (time) 7:01 ☐ A.M. ☒ P.M., on (date) 7-31-75.

EXHIBIT B

WITNESS

WITNESS

SIGNATURE OF PERSON WAIVING RIGHTS



D.T.P.

1124

July 31, 1975

The following is a statement taken from  
Douglas V. Stewart (20.B 06/21/40) at DEA  
Office, 68 Court St Buffalo N.Y. by SA  
Joseph E. Burns & SA William T. McDonald  
relative to the narcotic trafficking of Stephen  
Castle CA-75-X043:

I first met Stephen Castle in the summer  
of 1973 at my house, 42 Qd Ford St Bf/6 N.Y.  
Castle was repairing a wall with plaster.  
After about one month he and I started  
to discuss drugs, heroin. He first sold  
me 1/4 bundle of heroin, <sup>for \$50.00</sup> after about  
one knowing him for about six months.

During the six month period I had  
bought well money, \$25 to \$50, from Castle  
to buy drugs. Castle then said I could  
buy drugs (heroin) from him because  
he had a contact "MONDO" who I  
later learned was BOBBY JONES.

Castle later told me he was he  
getting his heroin from HAYWOOD JONES  
& ABRAHAM PRINCE on a regular basis.

I would buy heroin from Castle  
for \$50.00 a quarter bundle, about  
three times a week, during 1974.

Approximately January or February 1975  
Castle and I had a dispute about  
some money. He then became cool  
toward me until about two months  
ago, May 1975. Castle then ask me  
if I knew some people he could  
buy heroin from because ROBERT MARKS  
stuff which came from BOOTSIE CLARK.

EXHIBIT C



② D. 15

was not good enough for Castle to make a profit.

Castle told me he went to New York City with Abraham PRINCE in May 1975 to buy an ounce of heroin. He said the trip cost him \$4000<sup>00</sup> and the heroin he purchased there was not good quality. He felt that PRINCE beat him out of some money.

Castle then asked me to take him to some people I knew in Washington D.C. We left on Allegheny Airlines from Buffalo N.Y. via Rochester N.Y. in June 1975. We went to my brother's house, BOBBY STEWART, 1037 SE Good Hope Road, Washington D.C. Bobby's telephone a negro male name TOE who brought 4 spoons of heroin to the house. Toe drove a 1970 Cadillac, brown in color, D.C. plates. Toe collected \$500<sup>00</sup> from Castle. I tested the heroin for Castle by shooting it in my arm at the house. I told Castle it was alright. My wife ORVETTA accompanied Castle and I on the trip.

About three weeks ago, during July 1975 I accompanied Castle to my brother's house again in Washington D.C. flying via Allegheny Airlines. at this time Castle purchased 8 spoons of heroin from Toe again for \$2000<sup>00</sup>.

When we got back to Buffalo N.Y. Castle had me test the heroin by me shooting up with it. I told him it was good.



(3) D.V. 11

Castle gave my wife and I a half bundle for the first trip and gave me two bundles of heroin for the second trip.

Castle told me he cut the heroin with lactose and quinine at his house at 1048 Hertle Ave Buffalo N.Y. Castle said he had a connection for quinine from a Puerto Rican named "RICO".

I have read this statement consisting of three pages. I swear this is the truth to the best of my knowledge.

I am giving this statement of my own free will and have not received any promises or threats.

I have been advised of my Constitutional Rights and signed a paper waiving those rights.

WITNESS:

Joseph E. Burns Special Agent  
William T. McDaniel Special Agent



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

UNITED STATES OF AMERICA,

Plaintiff-  
Appellee

vs.

DOUGLAS STEWART,

Defendant-  
Appellant

AFFIDAVIT OF SERVICE

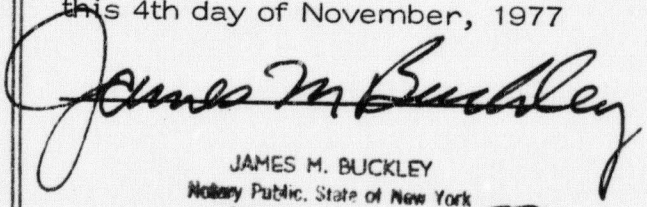
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STATE OF NEW YORK )  
COUNTY OF ERIE ) SS  
CITY OF BUFFALO )

GARY S. BITTNER, being duly sworn, deposes and says:

1. Deponent is the attorney for the defendant-appellant, DOUGLAS STEWART.
2. On the 4th day of November, 1977 deponent served the defendant-appellant's brief and appendix upon Richard Arcara, United States Attorney for the Western District of New York, attorney for the plaintiff-appellee, at 502 United States Court house, Buffalo, New York, by delivering a true copy thereof to a person in the United States Attorney's Office then and there authorized to accept service of legal documents.

Sworn to before me  
this 4th day of November, 1977

  
JAMES M. BUCKLEY  
Notary Public, State of New York  
Qualified in Erie County  
My Commission expires Mar. 30, 1978



STATE OF NEW YORK, COUNTY OF

SS.:

Initial

☐ Certification  
by Attorney

The undersigned attorney certifies that the within  
has been compared by the undersigned with the original and found to be a true and complete copy.

Initial

☐ Attorney's  
Affirmation

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is  
the attorney(s) of record for  
in the within action; that deponent has read the foregoing  
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein  
stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent  
further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

SS.:

Initial

☐ Individual  
Verification

he, being duly sworn deposes and says that  
in this action; that he read the foregoing  
and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein  
stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Initial

☐ Corporate  
Verification

of being duly sworn, deposes and says that he is the  
the corporation named in the within entitled action; that he has read the foregoing  
and knows the contents thereof; and that the same is true to h own knowledge, except as to the matters therein  
stated to be alleged upon information and belief, and as to those matters he believes it to be true.  
Deponent further says that the reason this verification is made by deponent and not by  
is because the said  
is a corporation and the grounds of deponent's belief as to all matters in the said  
not stated upon h own knowledge, are investigations which deponent has caused to be made concerning the subject  
matter of this and information acquired by deponent  
in the course of h duties as an officer of said  
corporation and from the books and papers of said corporation.

Sworn to before me, this  
day of

19

STATE OF NEW YORK, COUNTY OF

SS.:

☐ Affidavit  
of Service  
By Mail

being duly sworn, deposes and says; deponent is not a party to the action,  
is over 18 years of age and resides at  
On 19 deponent served the within  
upon  
attorney(s) for in this action, at  
the address, designated by said attorney(s) for that purpose  
by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in—a post office—official  
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ Affidavit  
of Personal  
Service

On 19 at upon  
deponent served the within  
herein, by delivering a true copy thereof to h personally. Deponent knew the  
person so served to be the person mentioned and described in said papers as the therein.

☐ Description

The person served would be described as approximately years of age lbs. ft. in.  
male female hair skin eyes other

Sworn to before me, this  
day of

19



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
~~State of New York~~

~~Court~~

County of ERIE

UNITED STATES OF AMERICA,

Plaintiff-  
Appellee

vs.

AFFIDAVIT OF SERVICE

DOUGLAS STEWART,

Defendant-  
Appellant

Index No.

Year

GARY S. BITTNER  
Attorney for Defendant-Appellant

Office, Post Office Address & Telephone  
SUITE 2400, MAIN PLACE TOWER  
BUFFALO, NEW YORK 14202  
(716) 847 - 2178

Personal Service of the within  
hereon endorsed, is admitted this

day of

and of the notice (if any)  
19

.....  
Attorney(s) for

Sir:—Please take notice

Notice of Entry

that an  
within entitled action on the  
in the office of the Clerk of the County of

of which the within is a copy, was duly granted in the  
day of 19 , and duly entered  
on the day of 19

To  
Attorney(s) for

GARY S. BITTNER  
Attorney for